



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Stemmler et al.

Docket No.: 13424/12068 US

Serial No.: 09/492,214

Group Art Unit: 1641

Date Filed: January 27, 2000

Examiner: Gabel, Gailene

For: Quantitative Determination Of Analytes In A Heterogeneous System

Customer No.: 23719

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April 11, 2003

Date: 4/11/03 Name: Myka Springut
Assistant Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

In response to the Office Action mailed February 12, 2003, Applicants provisionally elect with traverse the subject matter of claims 2-7, 9-16, 19, 21, 23, 33-36, 42-45 and 47.

The time period for responding to the Office Action expired on March 12, 2003. Pursuant to the enclosed petition and fee for a one-month extension of time, the period for responding to the Office Action expires on April 12, 2003, and thus this response is timely filed.

REMARKS

The Examiner has made a restriction requirement under 35 U.S.C. § 121 between the inventions of Group I, claims 2-7, 9-16, 19, 21, 23, 33-36, 42-45 and 47, directed to determination of analyte concentration using a quenching substance and Group II, claim 46, directed to determination of analyte concentration using a metal as the quenching substance. The Examiner's alleged basis for the restriction between the inventions is that

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the claims in Group I require any quenching substance, while the claim in Group II requires a metal as the quenching substance.

Applicants respectfully disagree, and submit that the Examiner has not met the burden of establishing two or more independent and distinct inventions claimed in one application under 35 U.S.C. § 121. For example, claims 35 and 43 that the Examiner classified in Group I, may include a metal as the quenching substance, while claim 46 classified by the Examiner in Group II includes a quenching substance that is also a metal. Thus, the distinction between Group I and Group II is unclear and the Examiner has not established that the inventions in Group I and II are independent and distinct. Accordingly, the restriction requirement should be withdrawn.

The Examiner is invited to call Applicants' attorney at the telephone number listed below to clarify this restriction requirement.

If additional fees are deemed necessary for the filing of this response, authorization is hereby given to charge any such fees to Deposit Account No. 11-0171.

Respectfully submitted,



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